

FILE:H  
89-8-H01

BEFORE THE ARIZONA STATE BOARD OF PHARMACY

1	IN THE MATTER OF:	)	
	DOUGLAS C. DER	)	FINDINGS OF FACT
2	Certificate of Registration	)	CONCLUSIONS OF LAW
	Number 5545	)	AND THE BOARD ORDER
3	and	)	
	D.C.D. PHARMACY	)	No. 89 - 8 - H
4	<u>Permit Number 1678</u>	)	

5 DIRECTED TO: DOUGLAS C.DER  
9225 N. 3rd St.  
6 Phoenix, AZ 85020  
and  
7 D.C.D. PHARMACY  
9225 N. 3rd St.  
8 Phoenix, AZ 85020

9 This Matter came before the Arizona State Board of Pharmacy for hearing  
10 on the 15th day of August, 1989 pursuant to Complaint and Notice of Hearing  
11 No. 89 - 8 - H (hereinafter referred to as "Complaint"). Michael Noel,  
12 president, presided with J. Edward Saba, vice-president, and members Kathryn L.  
13 Kalsman, Daniel J. Jacob, Linda Tansik and Martha Barron in attendance and  
14 participating therein.

15 The State was represented by the office of the Attorney General, Timothy J.  
16 Agan, Assistant Attorney General. The respondent DOUGLAS C. DER was present  
17 and was represented by counsels, Robert H. Oberbillig and James Y. Wong of the  
18 the Phoenix law firm of Snell and Wilmer.

19 The Board, after consideration of the evidence and testimony presented,  
20 hereby makes the following Findings of Fact, Conclusions or Law and Board  
21 Order.

FINDINGS OF FACT

I

1. DOUGLAS C. DER is a pharmacist holding Certificate of Registration Number 5545 issued by the Arizona State Board of Pharmacy pursuant to A.R.S. § 32-1922 and D.C.D. PHARMACY is the holder of Permit Number 1678 issued by the Arizona State Board of Pharmacy pursuant to A.R.S. § 32-1929.

2. D.C.D. PHARMACY is a community pharmacy located at 9225 N. 3rd St. in Phoenix, AZ and the Arizona State Board of Pharmacy did conduct an audit and prescription survey of D.C.D. PHARMACY on April 3, 1989 and April 14, 1989. This material was presented as Schedule I, II and III in the Complaint.

3. DOUGLAS C. DER was the Responsible Pharmacist of D.C.D. PHARMACY between the dates of November 2, 1987 and April 14, 1989 and as such was responsible for maintaining proper records of the receipt and disposal of prescription only drugs as identified in A.R.S. § 32-1901.51 and controlled substances as identified in A.R.S. § 36-2513, § 36-2514 § 36-2515 and 21 C.F.R. § 1308.12, § 1308.13 and § 1308.14.

4. The evidence and testimony presented did sustain the allegations contained in paragraphs four (4) through sixteen (16), paragraphs twenty-two (22) through twenty-seven (27), paragraphs thirty-two (32) through fifty-nine (59) and paragraphs sixty-six (66) through seventy-two (72) contained in the Complaint.

CONCLUSIONS OF LAW

II

1. The Arizona State Board of Pharmacy has jurisdiction in this matter pursuant to A.R.S. § 32-1904, A.R.S. § 32-1927 and A.R.S. § 32-1932.

1        2. The conduct alleged and sustained in paragraphs four (4) through  
2 sixteen (16) of the Complaint constitutes a violation of A.R.S. § 36-2523,  
3 A.R.S. § 32-1901.55, 21 C.F.R. § 1304.03, 21 C.F.R. 1304.21, A.A.C.  
4 R4-23-1003.4.b and A.A.C. R4-23-610.A in that DOUGLAS C. DER, d/b/a D.C.D.  
5 PHARMACY failed to keep accurate records accounting for the receipt and  
6 disposal of controlled substances.

7        3. The conduct alleged and sustained in paragraphs twenty-two (22) through  
8 twenty-seven (27) of the Complaint constitutes a violation of A.R.S. § 36-2523,  
9 21 C.F.R. § 1304.03, 21 C.F.R. § 1304.21, A.A.C.R4-23-1003.4.b and A.A.C.  
10 R4-23-610.A in that DOUGLAS C. DER, d/b/a D.C.D. PHARMACY failed to keep  
11 accurate records accounting for the receipt and disposal of controlled  
12 substances.

13        4. The conduct alleged and sustained in paragraphs thirty-two (32)  
14 thirty-six (36), forty-four (44), forty-five (45), forty-six (46), forty-  
15 seven (47), forty-eight (48), forty-nine (49), fifty (50), fifty-one (51),  
16 fifty-three (53), fifty-four (54), fifty-six (56), fifty-seven (57), and fifty-  
17 eight (58) of the Complaint constitutes a violation of A.R.S. § 32-1968 and  
18 U.S.C. 503 [353] (B)&(C) in that DOUGLAS C. DER, d/b/a DCD PHARMACY did dispense  
19 prescription only drugs without a valid prescription order from a medical  
20 practitioner.

21        5. The conduct alleged and sustained in paragraphs thirty-three (33),  
22 thirty-four (34), thirty-five (35), thirty-seven (37), thirty-eight (38),  
23 thirty-nine (39), forty (40), forty-one (41), forty-two (42), forty-three  
24 (43), fifty-two (52), and fifty-nine (59) of the Complaint constitutes a  
25 violation of A.R.S. § 36-2525, and 21 C.F.R. § 1306.21 in that DOUGLAS C. DER,  
26

1 d/b/a D.C.D. PHARMACY did dispense controlled substances without a valid  
2 prescription order from a medical practitioner.

3 6. The conduct alleged and sustained in paragraphs sixty-seven (67) of the  
4 Complaint constitutes a violation of A.A.C. R4-23-407.A.1.a. in that DOUGLAS C.  
5 DER, d/b/a D.C.D. PHARMACY did fail to enter the issue date on prescription  
6 orders on 12 different occasions between the dates of May 4, 1988 and April 4,  
7 1989.

8 7. The conduct alleged and sustained in paragraph sixty-eight (68) of the  
9 Complaint constitutes a violation of A.R.S. § 36-2525 and 21 C.F.R. § 1306.05  
10 in that DOUGLAS C. DER, d/b/a D.C.D. PHARMACY did fail to enter the physician's  
11 address on prescription orders on 307 different occasions between the dates of  
12 May 4, 1988 and April 4, 1989.

13 8. The conduct alleged and sustained in paragraph sixty-nine (69) of the  
14 Complaint constitutes a violation of A.R.S. § 36-2525 and 21 C.F.R. § 1306.05  
15 in that DOUGLAS C. DER, d/b/a D.C.D. PHARMACY did fail to enter the physician's  
16 DEA number on prescription orders on 262 different occasions between the dates  
17 of May 4, 1988 and April 4, 1989.

18 9. The conduct alleged and sustained in paragraph seventy (70) of the  
19 Complaint constitutes a violation of A.R.S. § 36-2525 and 21 C.F.R. § 1304.04  
20 (h) (2) in that DOUGLAS C. DER, d/b/a D.C.D. PHARMACY did fail to imprint the  
21 Red "C" on prescription orders on 64 different occasions between the dates of  
22 May 4, 1988 and April 4, 1989.

23 10. The conduct alleged and sustained in paragraph seventy-one (71) of the  
24 Complaint constitutes a violation of A.A.C. R4-23-407.A.1.f in that DOUGLAS C.  
25 DER, d/b/a D.C.D. PHARMACY did fail to enter the dispensing date on prescription  
26 orders on 13 different occasions between the dates of of May 4, 1988 and April  
4, 1989.

1        11. The conduct alleged and sustained in paragraph seventy-two (72) of the  
2 Complaint constitutes a violation of A.R.S. 32-1963.01.D in that DOUGLAS C. DER,  
3 d/b/a D.C.D. PHARMACY did fail to utilize a legal prescription order form on  
4 256 different occasions between the dates of May 4, 1988 and April 4, 1989.

5        12. The conduct alleged and sustained in paragraphs four (4) through  
6 sixteen (16), twenty-two (22) through twenty-seven (27), thirty-two (32) through  
7 fifty-nine (59) and sixty-six (66) through seventy-two (72) of the Complaint  
8 constitutes a violation of A.R.S. § 32-1927.A.10 in that DOUGLAS C. DER has  
9 violated federal and state law relating to the practice of pharmacy to such a  
10 degree that DOUGLAS C. DER is unfit to practice pharmacy.

11       13. The conduct alleged and sustained in paragraphs four (4) through  
12 sixteen (16), twenty-two (22) through twenty-seven (27), thirty-two (32) through  
13 fifty-nine (59) and sixty-six (66) through seventy-two (72) of the Complaint  
14 constitutes a violation of A.R.S. 32-1927 B.2 in that DOUGLAS C. DER has  
15 violated federal and state laws relating to prescription only drugs and  
16 controlled substances.

17       14. The conduct alleged and sustained in paragraphs four (4) through  
18 sixteen (16), twenty-two (22) through twenty-seven (27), thirty-two (32) through  
19 fifty-nine (59) and sixty-six (66) through seventy-two (72) of the Complaint  
20 constitutes a violation of A.R.S. § 32-1932.A.1 in that D.C.D. PHARMACY is not  
21 being conducted in accordance with federal and state laws as it relates to  
22 the sale and distribution of drugs.

1 ORDER

2 III

- 3 1. Certificate Number 5545 issued to DOUGLAS C. DER is revoked effective  
4 upon receipt of this Order by the Respondent.
- 5 2. DOUGLAS C. DER may appear, on or after September 1, 1991, before the  
6 Arizona State Board of Pharmacy to request reinstatement pursuant to the  
7 following conditions:
- 8 A. Continuing Education Credits are current.
- 9 B. DOUGLAS C. DER has complied with all federal and state drug laws.
- 10 3. Permit Number 1678 issued to D.C.D. Pharmacy is suspended for a period  
11 of two (2) years effective September 1, 1989.
- 12 4. The suspension of Permit Number 1678 is stayed and probation is imposed  
13 pursuant to the following conditions:
- 14 A. DOUGLAS C. DER will not be allowed to order or receive legend drugs  
15 or controlled substances.
- 16 B. DOUGLAS C. DER will not enter the pharmacy or prescription  
17 compounding area of D.C.D. PHARMACY at any time. DOUGLAS C. DER  
18 shall not possess a key to D.C.D. PHARMACY unless the pharmacy or  
19 prescription compounding area is secured as approved by the Board of  
20 Pharmacy.
- 21 C. Proper accountability for controlled substances is in place and being  
22 properly maintained on or before October 1, 1989.
- 23 D. Compliance with all federal and state laws relative to the practice  
24 of pharmacy and the receiving, storing and dispensing of legend  
25 drugs and controlled substances is instituted and maintained.
- 26 E. On or after September 1, 1991, DOUGLAS C. DER may appear before the  
Arizona State Board of Pharmacy to show cause why the imposed  
probation of Permit Number 1678 should be removed.

DOUGLAS C. DER and D.C.D. PHARMACY are hereby notified they have the right  
to petition this Board for a rehearing within ten (10) days after receipt of  
this order pursuant to the provisions of A.C.C. R4-23-109.

1 DATED this 22<sup>nd</sup> day of August, 1989.

2 ARIZONA STATE BOARD OF PHARMACY

3  
4 SEAL

5 By Llyn A. Lloyd  
6 Executive Director

7  
8 Copies of the foregoing  
9 Findings of Fact, Conclusions  
10 of Law and Board Order mailed  
by Certified mail this  
day of August, 1989 to:

11 DOUGLAS C. DER and  
12 D.C.D PHARMACY  
9225 N. 3rd St.  
Phoenix, AZ 850210

13 and

14 Robert H. Oberbillig  
15 Snell and Wilmer  
3100 Valley Bank Center  
16 Phoenix, AZ 85073

17 and by courier mail to:

18 Timothy J. Agan, Esq.  
19 Assistant Attorney General  
1275 W. Washington  
Phoenix, AZ 85007  
20 Attorney for the State

21

22

23

24

25

26

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 Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check boxes for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address. (Extra charge)  
 2. ☒ Restricted Delivery (Extra charge)

3. Article Addressed to:  
 DOUGLAS C DER  
 DCD PHCY  
 9225 N. 3RD ST.  
 PHOENIX, AZ 85020

4. Article Number  
 P 052 989 299

Type of Service:

- ☐ Registered ☐ Insured  
☒ Certified ☐ COD  
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Always obtain signature of addressee or agent and **DATE DELIVERED**.

5. Signature - Addressee

X

6. Signature - Agent

X

7. Date of Delivery

9-22

8. Addressee's Address (ONLY if requested and fee paid)

PS Form 3811, Mar. 1988

\* U.S.G.P.O. 1988-212-865

DOMESTIC RECEIPT